

REQUIREMENTS FOR CAREGIVER BACKGROUND CHECKS FOR CHILD CARE CENTERS

On October 1, 1998, a law was enacted that implemented a new process for background checks in child care centers. An administrative rule (HFS 12) was created to implement the provisions of the law. The Department of Health and Family Services (DHFS) maintains a website at www.dhfs.wi.gov/caregiver that contains copies of caregiver background check (CBC) forms and information, a copy of HFS 12 and answers to some frequently asked questions. A copy of HFS 12 is also included in the start-up packet available through the regional office. The website is updated frequently and we encourage you to become familiar with it. If you do not have Internet access, most public libraries have computers with Internet access.

List of acronyms used

CBC Caregiver Background Check
BID Background Disclosure form (HFS 64)
BRL Bureau of Regulation and Licensing
DOJ Department of Justice
DHFS Department of Health and Family Services

OVERVIEW of the CAREGIVER LAW

The Caregiver Law identifies certain crimes, acts or offenses that bar individuals from holding a child care license or from being employed by, or residing at, a child care center. These crimes, acts or offenses are listed in HFS 12, Appendix A, under the heading, Offenses Affecting Caregiver Eligibility. A person who has a conviction or finding for one of the crimes, acts or offenses listed remains permanently barred from licensure, employment or residency in a child care center unless that person requests a rehabilitation review from the DHFS and receives approval. Rehabilitation review is a process that allows a barred individual the opportunity to demonstrate to the DHFS that s/he is rehabilitated and not likely to repeat the conduct that led to the criminal conviction or finding.

In accordance with the Caregiver Law, convictions for other crimes that are not listed in Appendix A can be considered for “substantial relationship”. The Caregiver Law permits the DHFS to refuse licensure or non-client residency to persons who have a conviction(s) determined to be substantially related to the care and safety of children. Child care providers can refuse employment on the same basis. Once determined, substantial relationship has a similar effect as a bar but substantial relationship is not subject to the rehabilitation review process. Also, unlike a bar, a finding of substantial relationship applies only to the particular license, job or residency for which it was considered and determined.

The screening tool that begins the CBC is the Background Information Disclosure (BID) form (HFS 64). (A copy is attached.) The person regarding whom the CBC is being conducted completes the BID.

The DHFS, delegated to the Bureau of Regulation and Licensing (BRL), requires BIDs from licensees and non-client residents, including children aged 10 through 17, at the point of initial application and every 2 years thereafter. A CBC is conducted whenever warranted by answers on the BID. The BRL routinely conducts CBCs on licensees and **adult** non-client residents at initial application and every four years thereafter (with every other BID) even when the BID is clean, except that a CBC is still conducted for children ages 10 through 17 only when warranted by answers provided on their BID form.

Child care licensees are responsible for obtaining BIDs from their employees, and individuals they have under contract, every 4 years and for conducting a CBC on each. They may also require a BID and conduct a CBC whenever it is appropriate. For example, should the licensee learn that an employee has been arrested, s/he should require a BID and conduct a CBC on that employee regardless of when the last CBC was conducted.

To complete the CBC, the BRL or licensee fills out the Criminal History Record Request form (DJ-LE-250 or 250A when multiple requests are being made). The requester submits this form, along with the required fee, to the Department of Justice (DOJ) where it is matched against the Wisconsin adult and juvenile criminal history database. In addition to the DOJ match, as part of the CBC some DHFS records are also matched. These records pertain to professional licenses, child care licenses/credentials and regulatory actions related to them. The requester receives the results from these matches separately from the DOJ match results.

FREQUENTLY ASKED QUESTIONS

1. How does the Caregiver Law affect child care centers? The BRL will conduct a background check on all licensees and adults residing in the home. The BRL will also review BID forms for children ages 10 through 17 years who reside in the child care center and any other helpers in the child care center who are ages 10 through 17 years. The BRL will conduct a full background check on person ages 10 through 17 years only if warranted by information on the child's BID form.

The child care licensee is responsible for conducting CBCs on adult employees and individuals who the center has under contract. Adult volunteers who are used to meet staff-to-child ratio and student teachers must also have a background check conducted by the child care center or another designated agency such as a technical college, university or employment agency. (See questions 13 and 16.)

2. I am getting ready to apply for a child care license. What must I send to the BRL regional office to begin the background check process necessary to obtain a license? You must complete a BID form for yourself. In addition, you will need to give a BID form to any persons residing in your child care center who are 10 and older and ask them to complete it. Completed BID forms must be submitted along with application materials to the BRL regional office. Except for children aged 10 through 17 years, you must submit a \$7.50 processing fee for each completed BID form along with the applicable licensing fee. If the BRL determines

that the caregiver background check must be processed for a child based on the information provided on the child's BID form, BRL will request the additional fee from you.

3. Why does my child who is age 10 or older need to complete a BID form? Part of the Caregiver Law included a provision for checking the juvenile records for every person aged 10 and over who works for, assists or resides in a child care center.

4. May I complete and sign the BID form for my child? Parents may complete and sign the BID for their child. Children may also complete and sign the form themselves.

5. How do I obtain a background check on an employee, helper or substitute and how often must I do it? You must complete a CBC on each of your employees, substitute caregivers, or contracted persons providing services to the children in your care every 4 years. There are 3 steps you take to complete a CBC:

- Give each employee, contracted person, or substitute caregiver a BID and ask them to complete it. Be sure to keep the most recent BID on file for future review by your licensing specialist. See question 9 on how to use the form as a screening tool.
 - You have 60 days after your license has been issued to complete CBCs for new hires. (See question 10.)
- Complete a Multiple or Single Records Request form, (DJ-LE-250 or 250A) and submit it to the DOJ (see question 6.) along with the necessary fees. (See question 7.)
 - When completing the DJ-LE-250 or 250A, check the box, Child Care – Caregiver, and enter your facility number in the space provided. (See question 8.)
- After you receive the reports returned to you from the DOJ and the DHFS, you must evaluate the results and take appropriate action. (See question 11., 12. and 13.) Keep the background information on file.

6. Where do I get the Multiple or Single Record Request forms? The request forms can be obtained from the web site: www.dhfs.wi.gov/caregiver and mailed or faxed to DOJ. Print a copy of the form, make sure to include a processing fee for each name listed and include a self-addressed, stamped envelope. The request can also be made online once you have established an account with DOJ. For instructions, see the DOJ website: www.doj.wi.gov. Click on “services” on the left of the screen, then Criminal Background Check.

7. What fees must I pay for a CBC? The fee for each record requested is \$2.50 plus:

- For CBCs done by mail or fax:
 - Non-profit organization \$7.00
 - Government agency \$10.00
 - Any other requester \$18.00
- For CBCs done online:
 - Non-profit organization \$2.00
 - Government agency \$5.00
 - Any other requester \$13.00

8. What is a facility number and where can I find the one for my center? The facility number is a 6 or 7-digit number assigned by the BRL to each licensed child care center. You

will not be issued a facility number until you have received your license. This number will appear on the license certificate and any future mailing you receive from the BRL. It is also available from your licensing specialist. You have 60 days after your license has been issued to obtain the complete background checks on any employees. Your facility number must be used when submitting a background check request to the DOJ on the Multiple or Single Record Request forms.

9. How do I use the BID as a screening tool? You will notice that the BID has 2 sections, A & B. Please use the following guidelines when screening a completed BID.

- If the form contains only **No** answers to all questions in section A, that person may work in your child care center under supervision until a complete background check is received and evaluated. The complete background check must be obtained within 60 days after a person begins to work for you.
- A **Yes** answer to any question on section A of the BID may indicate that the person is barred from licensure, non-client residence or employment in the child care center unless rehabilitation review approval is obtained from the DHFS.
- A **Yes** answer to a question in section B of the BID is for your information and may indicate that additional information must be obtained.

10. How quickly after I hire or contract with a person must I complete the CBC? You may allow a person whose BID has only No answers in part A and B to begin employment immediately, with supervision. You have 60 days after you hire a new employee to complete the background check on that individual. That includes obtaining the results from the DOJ and the DHFS and completing any follow-up investigation of the results. It is imperative that the request for a background check be submitted to the DOJ in a timely fashion. We recommend that the request be submitted within 48 hours after hiring so you will be sure to have sufficient time to receive the reports back and conduct any necessary investigation within the 60-day time frame. If a person answers Yes on part A or B of the BID, you may not allow that person to begin employment until you have completed the CBC and evaluated the results.

11. What do I do with the match results I receive from the DOJ? If the results show that the individual on whom the matches were run has a criminal conviction or other offense, you must check the crime or offense against the list of barred crimes, acts and offenses in Appendix A of HFS 12, Offenses Affecting Caregiver Eligibility. **If the person is barred, you cannot hire the person, or continue employment of a current employee, until you have evidence of the person's rehabilitation approval from the Department.** See question 17. If the reports show that the individual has a conviction for a crime that is not a barred crime, you may need to conduct an investigation to determine whether the crime is substantially related to the job the person is, or would, perform. If the person has been convicted of certain crimes within 5 years before the information was obtained, you must, by law, make every reasonable effort to investigate the circumstances for substantial relationship. See question 12. These specific crimes are listed in the introduction to Appendix A, Offenses Affecting Caregiver Eligibility, of HFS 12. You can find a copy of HFS 12 on the DHFS web site at: www.dhfs.wi.gov/caregiver.

12. How do I conduct an investigation for substantial relationship and make a decision?

You seek additional information from the Clerk of Court where the crime was prosecuted or from the agency which took the action against the individual. Once you have gathered all of the relevant information, you will use it to determine whether the crime that was committed substantially relates to the person's ability to care for children or to perform the job for which they have applied or been hired. A form has been developed to help you make this decision. The form, Caregiver Background Checks Substantially Related Investigation Report (CFS-2261) is available on the DHFS web site at www.dhfs.wi.gov. Search for CFS 2261. You may also review HFS 12.11(3) or contact your licensing specialist if you have questions about the investigation or decision making process. It is up to you to decide whether or not to use a determination of substantial relationship as a reason not to hire a candidate or to dismiss an employee. It is a good practice to document the steps you take in your investigation and your employment decision.

13. What do I do with the match results I receive from DHFS?

The matches against DHFS records provides information such as:

- A finding of abuse, neglect or misappropriation of client property against the person who is the subject of the CBC. This information is contained in the Adult Caregiver Reporting System and generally pertains to people working as a certified nurse's aide (CNA) and nurses .
- Information about the status of professional licenses/credentials the subject of the CBC has or had through the Department of Regulation and Licensing. Examples of such licenses/credentials are CNA, nurse, and social worker.
- Information about regulatory actions including license/credential records, revocations, and employment, contract or permission to reside as a non-client resident prohibitions, related to the Caregiver Law made by the DHFS, a county or a licensed child placing agency.
- Information about any rehabilitation reviews involving the subject conducted by the DHFS or other agencies.

If the subject of the CBC has any of the above records reported on the DHFS match response (sometimes referred to as the IBIS letter), you must call the telephone number provided to gather more information from the agency involved. If you learn that the individual on whom the matches were run has committed an offense listed in Appendix A of HFS 12, Offenses Affecting Caregiver Eligibility, that person is barred. **You cannot hire the person, or continue employment of a current employee, until you have evidence of the person's rehabilitation approval from the Department.** See question 17.

14. Occasionally the high school in my community will ask whether students, as part of a class, may come to observe in my child care center or I may accept a student teacher from a local technical college or university. Do these students need to have a background check?

Students who observe or participate in a program as the result of a class need to have a completed BID on file at the center. The BID must be evaluated as described in Question 9 above. A complete background check is required if the placement will last for longer than 60 days.

15. What if I share an employee with another child care facility? If more than one center contracts with or employs an individual who must have a background check, either center may share the background check results with the other center. We recommend that each center obtain a completed BID from the individual.

16. Who is responsible for completing the background check on an employee hired from a temporary employment agency? Either the center or the temporary employment agency may conduct the background check. Because only licensed child care centers have a valid facility number, which is needed to obtain the juvenile portion of the record check, the temporary employment agency may have an agreement with a licensed child care center to request the background checks through the center. The center may share the results of the background check with the temporary employment agency which in turn would do any investigation and make the determination as to whether the employee may work in a licensed child care facility. A letter should be sent to each center where the temporary employee works indicating the results of the background check.

17. What is a rehabilitation review and how does a person request one? Persons who have committed certain crimes, acts, or offenses are barred from licensure, non-client residency, employment or contracting with a licensed program unless the bar is lifted through a rehabilitation review. Section HFS 12.12 explains who is eligible for a rehabilitation review and how to request one. If a person wishes to request a rehabilitative review, s/he must follow the directions on the Rehabilitation Review Application, which is available from the regional office or the DHFS website www.dhfs.wi.gov/caregiver. A rehabilitation review form (EXS-263) is available in the section labeled "Forms". The person requesting the rehabilitation review will need to complete the application form and forward it with all accompanying materials to the Department's Office of Legal Counsel at the following address: Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm. 651, Madison, WI 53701-7850.

Rehabilitation approval does not ensure that approved person will receive a license, employment, contracts or permission to reside at a center. It lifts the bar so that the individual may be considered like any other person. If a non-client resident in the child care center age 10 or older has a crime, act or offense that requires a rehabilitation review, one must be completed before a license can be issued.

Enclosures:

Background Information Disclosure Form (HFS-64) and instructions

Available from the DHFS web site (www.dhfs.wi.gov):

Background Information Disclosure Form (HFS-64) and instructions

Wisconsin Criminal History Customer Account Application (DJ-LE-251)

Wisconsin Criminal History Single Name Record Request (DJ-LE-250) and instructions

Wisconsin Criminal History Multiple Name Record Request (DJ-LE-250A) and instructions

Caregiver Background Checks Substantially Related Investigation Report (CFS-2261)

List of out-of-state criminal record checks offices

List of Wisconsin clerks of court